

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,223

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Aging and Disabilities substantiating a report of exploitation against the petitioner involving his elderly mother. The petitioner seeks to have the report expunged from the Department's "registry".

FINDINGS OF FACT

1. The petitioner lived with his eighty-nine-year- old mother and was the representative payee for her Social Security check of \$600 per month which he kept each month and purportedly used to pay her living expenses. The petitioner, his wife and his mother shared an apartment which rented for \$535 per month plus utilities. The mother's share was \$300-\$400 per month. This arrangement had been going on for about two and a half years.
2. On February 24, 1995, the petitioner's mother entered a nursing home after hospitalization for dementia, dehydration and respiratory arrest. Originally all concerned believed that the petitioner's mother would be there for only a brief stay. However on March 9, 1995, the petitioner was told by the nursing home that his mother was confused and in frail condition and would be in the home for an indeterminate period of time. The petitioner wanted her to come home but his mother seemed to want to stay in the nursing home.
3. On March 10, 1995, the social worker at the nursing home sent the petitioner a letter stating that his mother would no longer be qualified for Medicare payments at the home and that he needed to apply for Medicaid. On March 24, 1995, she spoke with the petitioner's mother who was concerned that her son was not paying her board and who stated she would do whatever he wanted because she had never "been the boss before." In April of 1995, the social worker again talked with the petitioner's mother about whether she wanted to stay in the nursing home or go home and was told that she wanted to stay in the home because "she could not see who would take care of her there [her son's home]".
4. On May 15, 1995, after she was notified by the financial office that the petitioner had made no

Medicaid application, the social worker called the petitioner and told him that she was mailing a partially completed Medicaid application which he needed to finish filling out and return to the Department of Social Welfare. The social worker filled out the form as best she could and circled items to be completed. The forms were then mailed to the petitioner. On May 17, 1995, the social worker again spoke with the petitioner's mother about whether she wanted to stay in the home or go back to her son's apartment. The mother said that she didn't think she wanted to go home but would go if her son insisted. She also stated that her son and his wife "want her money and never visit her".

5. The petitioner did visit his mother shortly thereafter and the social worker asked him at that time to reapply for Medicaid. She also suggested to him that he put some spending money in an account for his mother at the nursing home. However, the petitioner never put money in the account nor did he ever apply for Medicaid.

6. On June 7, 1995, the social worker went to the welfare office and applied for Medicaid on behalf of the petitioner's mother. The mother's eligibility was approved on July 4, 1995, and Medicaid paid her bill back to March 16, 1995. The petitioner's mother was notified via a letter to the petitioner, that her share of the monthly payment would be \$560 per month and that she already owed for April, May and June of 1995. The decision allowed the petitioner \$40 per month in personal needs. If the Department of Social Welfare had received notification from her doctor that there was a formal discharge plan, the patient also could have been allowed \$86 per month for a home upkeep deduction based on her residency with the petitioner. However, the petitioner never notified the Department of Social Welfare of the possibility of discharge nor did he ever contact the Department of Social Welfare with regard to the Medicaid at any time. The petitioner's Department of Social Welfare Medicaid worker became concerned about her when she discovered the patient share was not being paid because it could have resulted both in the closure of her Medicaid eligibility and eviction from the home.

7. The petitioner's mother's patient share of her nursing home costs remained unpaid for the months of April through September of 1995. During that time, the nursing home was successful in becoming the representative payee for the petitioner's mother and began to receive checks on her behalf in October of 1995. The petitioner's mother continues to reside in the nursing home.

8. On October 20, 1995, the nursing home reported to the Department of Aging and Disabilities that the petitioner had failed to use the petitioner's Social Security checks for her care. The matter was investigated through interviews with the petitioner, his wife, his mother, the Social Security administration, the Medicaid division at DSW, the nursing home social worker, representatives at the petitioner's bank, the owners of a funeral home and the petitioner's niece. Following these interviews, the Department's investigator concluded that the petitioner was the payee of his mother, that he understood his obligations to use the money on her behalf, that he was aware of the patient share requirements of the nursing home and that for six months he failed to make payments for her care there. He concluded that those facts constituted financial exploitation. The Director of the Adult Protective Services Division notified the petitioner in writing on January 15, 1996, that a recommendation would be made to the Commissioner that the allegations be substantiated and that a finding of financial exploitation would be entered against him in the registry unless he asked for a review. Because the petitioner failed to ask for a review, the Commissioner finalized the substantiation and so notified the petitioner on February 13, 1996. Copies of those documents are attached hereto as Exhibits No. One and Two.

9. The petitioner does not deny that he received the checks on behalf of his mother from April through

September of 1995, nor does he deny that he did not use the money to pay her nursing home bill. He admits that he used the checks for July, August and September of 1995, to cover his moving and other expenses when he moved from the apartment he had shared with his mother. He agrees that he owes the nursing home \$1600 for those months, but denies any liability for the three prior months because he was not aware of the patient share requirement until he received the Medicaid eligibility notice in July of 1996 and believed through those three months that his mother would be returning home. He says that he used about a third of the money to keep up the apartment during those three months and to give his mother a little spending money at the home but claims that he gave the bulk of the income from the checks dated April, May and June of 1995, totalling \$1200, to his mother's niece in December of 1995, to buy his mother a prepaid burial plot. The mother's niece credibly denied the latter statement under oath and the petitioner was unable to produce any receipts, bank statements, checks or other documents to confirm the transfer to her, saying only that he had paid cash. The funeral home which purportedly received the cash confirmed that it had in fact received no such payment on behalf of the petitioner's mother. Given this evidence, it cannot be found that the petitioner used the checks from April, May or June of 1995 on a pre-paid burial plot for his mother. It does appear that he used some small part of the money to keep up the apartment during those months in anticipation of his mother's eventual return.

10. Based upon the above evidence, it is concluded that the petitioner received checks on behalf of his mother from the Social Security Administration in the amount of \$600 for each month from April through September of 1994, that he understood that he had an obligation to use that money on behalf of his mother, and that he wilfully withheld most or all of that money from his mother without her legal authority to do so, thereby jeopardizing her ability to remain in nursing home care for those same months. It is also concluded that at least \$2700 of that money was wilfully used by the petitioner for his own advantage in violation of his obligation as representative payee for his mother and without any legal authority from her to do so.

ORDER

The decision of the Department substantiating the report is affirmed.

REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse and exploitation of elderly and disabled persons and keep those reports that are "substantiated" in a "registry" under the name of the person who committed the abuse. 33 V.S.A. §§ 6906 and 6911. Within 30 days of notification that a report of abuse has been substantiated against them, individuals can apply to the Human Services Board for a fair hearing on the ground that the report is unsubstantiated. *Id.* § 6906(d). Reports that are found to be unsubstantiated must be destroyed pursuant to 33 V.S.A. § 6906(e) and not entered in the Department's registry.

The statute which protects elderly and disabled adults, 33 V.S.A. § 6902, defines "exploitation" as follows:

As used in this chapter:

...

(7) "Exploitation" means:

(A) Wilfully using, withholding, or disposing of funds or property of an elderly or disabled adult without legal authority for the wrongful profit or advantage of another;

(B) Acquiring possession or control of or an interest in funds or property of an elderly or disabled adult through the use of undue influence, harassment, duress or fraud;

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As found above, the petitioner's conduct in this case clearly meets the above definition. Based on the above findings and conclusions, the Department's decision in this matter should be affirmed.

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